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## CITATIONS

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# In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 338

WELWEL WARSZOWER, ALIAS "ROBERT WILLIAM WIENER," ETC., PETITIONER

*v.*

THE UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE UNITED STATES

### OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 256–260) is reported at 113 F. (2d) 100.

### JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 24, 1940 (R. 260). The petition for a writ of certiorari was filed August 14 and was granted October 14, 1940. The jurisdiction of this Court is conferred under Section 240 (a) of the Judicial Code, as amended by the Act of February

13, 1925. See also, Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

## QUESTIONS PRESENTED

1. Whether the statute making criminal, willful and knowing "use" of "any passport the issue of which was secured in any way by reason of any false statement" (U. S. C., Title 22, Section 220) applies to the use of a United States passport as proof of United States citizenship and consequent right to enter the country by a resident aline returning from a trip abroad.

2. Whether this Court will consider the sufficiency of the evidence to prove that the passport was used to obtain entry and, if so, whether the evidence was sufficient.

3. Whether petitioner's own statements that he was an alien and that he had resided abroad, made under oath on three different occasions long before he obtained and used a United States passport, were sufficient without corroboration to prove that such was the case; and, if not, whether there was sufficient corroboration.

## STATUTE INVOLVED

Section 2 of Title IX of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 227 (United States Code, Title 22, Sec. 220) provides:

> Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure

> the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement, shall be fined not more than $2,000 or imprisoned not more than five years or both.

The full text of Title IX of the Espionage Act of June 15, 1917 (United States Code, Title 22, Secs. 213, 220, 221, 222) is set forth in the Appendix, *infra*, pp. 42–43.

## STATEMENT

The petitioner was indicted in the District Court of the Southern District of New York on December 4, 1939 (R. 2). In a single count, the indictment charged the use of a United States passport secured by an application which contained false statements. The statements in petitioner's passport application which were alleged to be false were: (1) that his name was Robert William Weiner; (2) that he was a citizen of the United States; (3) that he was born at Atlantic City, New Jersey, on September 5, 1896; and (4) that he had not resided outside the United States (R. 3). The indictment alleged that the petitioner used the passport by presenting it to an immigrant inspector at the port of

New York to secure entry as an American citizen upon his return from a trip abroad. Petitioner was convicted on February 15, 1940 (R. 196) and sentenced to two years' imprisonment (R. 205). On appeal to the Circuit Court of Appeals for the Second Circuit, the judgment was unanimously affirmed (R. 260).

The evidence at the trial established the following facts: The petitioner arrived at the port of Philadelphia on March 27, 1914, aboard the *S. S. Haverford* (R. 86; Ex. 19, R. 229). In the manifest which had been prepared by the steamship company or the master of the ship (R. 89), the following information was included: the petitioner's name was Welwel Warszower; his age was twenty-one years; he was a citizen or subject of Russia; his last permanent residence had been in Vikolsk, Czernigow; his father was his nearest relative in the country from which the alien had come and his father's address was Vikolsk, Russia; his destination was Pittsburgh where he was going to join his brother-in-law; he had never been in the United States before; and he had been born in Radanjenko, Russia (Ex. 19, R. 229). The accuracy of these statements was checked with petitioner himself upon his arrival at Philadelphia (R. 85–86, 89).

Three years later, on June 5, 1917, the petitioner registered under the Selective Service Act (R. 93–96). On that date he signed a registration card,

using the name "William Weiner", and stating that he had been born in Russia on September 5, 1893, and that he was a citizen or subject of Russia (R. 94–96; Ex. 21, R. 232). Subsequently, on December 31, 1917, the petitioner returned the draft questionnaire which he signed "William Weiner" (R. 95; Ex. 21, R. 232). In it, he claimed exemption as an alien born in Russia on September 5, 1893. He said that he had arrived in this country at Philadelphia on March 28, 1914, aboard the *S. S. Haverford,* that his parents had not been naturalized, that he had not taken out his first papers, and that he was willing to return to Russia and to enter its military service (Ex. 21, R. 232).

In 1932 the petitioner desired to travel in Europe. He applied for a reentry permit, which is required only of aliens, on March 4, 1932, using the name Welwel Warszower (R. 73–75, 106; Ex. 13, R. 220). In making the application, he showed the inspection card which had been issued to him upon his arrival in 1914 at Philadelphia (R. 75; Ex. 14, R. 221). The answers by the petitioner to the questions contained in the application form coincided exactly with those contained in the manifest of the *S. S. Haverford* (R. 87; Exs. 13, 16, R. 220, 223). He gave Russia, September 5, 1893, as the place and date of his birth; Philadelphia, March 27, 1914, as the place and date of his arrival in the United States; Kiev, Russia, as his last permanent residence before his arrival here; and his

age at the time of his arrival as twenty-one years, six months (Ex. 13, R. 220). He stated his address to be "c/o William Weiner, 245 East 175th Street, Bronx, New York" (Ex. 13, R. 220). A reentry permit was issued to the petitioner in the name of "Welwel Warszower" on March 16, 1932 (R. 77; Ex. 12, R. 219). Notice that it had been issued was sent to him "c/o Wm. Weiner" (Ex. 17, R. 225). He then went abroad and used the permit when he reentered the United States on June 5, 1932, aboard the *S. S. Bremen* at New York (R. 78, 81, 82; Exs. 7, 12, 18, R. 212, 219, 228).

At no time had the petitioner made application for naturalization (R. 72–73). United States passports may only be issued to American citizens (R. 21; Exs. 1, 4, R. 206, 209). Nevertheless, when he desired to travel to Europe again in 1936, he applied for a United States passport, using the name "Robert William Wiener". Exs. 1, 22, R. 206, 233). In the application he claimed to be a citizen of the United States, born in Atlantic City, New Jersey, on September 5, 1896 (Ex. 1, R. 206). The form contained a space in which the applicant was to indicate any periods of residence outside the United States (Ex. 1, R. 206). Petitioner left the space blank when he presented the application to the agent of the State Department (R. 7). The agent then asked petitioner whether he had ever been abroad before, and petitioner replied that he had not (R. 7, 8). The agent then filled in the

word "none," and the application contained this denial when petitioner swore to its truth (R. 8).

In order to establish his citizenship and, consequently, his eligibility to receive a passport, the petitioner submitted a certified transcript from the birth records of the Registrar of Atlantic City, New Jersey, which stated that "Robert William Wiener" had been born there on September 5, 1896, the son of "Solomon Wiener". (R. 17; Ex. C, R. 243). The entry in the birth records (Ex. 9, 10, 11, R. 216, 217, 218) from which this transcript was copied was proved to be a forgery; the handwriting in which the entry was made was different from that of the surrounding entries, and the condition of the ink showed that it had been made much more recently than the others (R. 114–155, 157–163). Moreover, although the law of New Jersey required that all original birth certificates be filed in the Bureau of Vital Statistics in Trenton (R. 29–30, 59–61), no such certificate was found in the Trenton files under the names of "Robert William Weiner," "Robert William Wiener," "William Weiner," "William Wiener," or "Welwel Warszower," or under any similar surname beginning with "V" (R. 30–31).

On July 21, 1936, the Department of State issued passport Number 332207 to "Robert William Weiner" (R. 25; Exs. 2, 5, R. 207, 210). On September 30, 1937, petitioner arrived at the Port of New York aboard the *S. S. Normandie* (R. 52,

106; Ex. 6, 8, R. 211, 215). He exhibited the passport to the immigration inspector who boarded the ship and by this means satisfied the inspector that he was a citizen of the United States entitled to enter immediately (R. 44–51).

Petitioner moved for a directed verdict and a dismissal of the indictment at the end of the Government's case (R. 165–180). After the argument of the motion petitioner rested his case and renewed the motion which was again denied (R. 180–181). The jury returned a verdict of guilty (R. 196). Petitioner moved to set aside the verdict and in arrest of judgment and this motion was also denied (R. 197).

## SUMMARY OF ARGUMENT

### I

The use of a United States passport to obtain entry to the United States as an American citizen is a "use" which falls within the prohibition of the statute. The Government's arguments in support of this contention are set forth at length in the brief in *Browder* v. *United States,* No. 287, present Term. They apply with even greater force to the case of an alien who presents the passport to effect an illegal entry.

There is no basis for the petitioner's argument that the word "use" in U. S. C., Title 22, Section 220, cannot be considered applicable to the presentation of a United States passport to obtain entry to this country because a similar interpretation of

the word in cognate sections of the Act (U. S. C., Title 22, Secs. 221, 222) would make criminal the presentation of an expired passport by a citizen to obtain entry from Canada or Mexico and would thus render them unconstitutional. It is at least debatable that those sections are inapplicable to passports which are invalidated by the ordinary time limitation. Moreover, there is no support for the contention that Congress could not constitutionally prohibit the use of expired passports to obtain entry. Finally, it is not open to the petitioner to resist a fair interpretation of the provision punishing the use of fraudulently obtained passports which presents no constitutional doubt by invoking a constitutional doubt as to other provisions if the word "use" is similarly interpreted there.

II

It is doubtful whether this Court will review the sufficiency of the evidence that petitioner presented the passport to the immigrant inspector at the Port of New York, since two courts have sustained its sufficiency. In any event, the testimony of Inspector Faire to that effect is clear, and petitioner's contention that it is equivocal rests upon a misunderstanding of the witness' description of his invariable practice with respect to the examination of persons entering the country. And even if the evidence showed no more than petitioner concedes it does, the jury would have been justified in inferring that the passport was actually exhibited.

## III

Petitioner contends that there was insufficient evidence to prove the falsity of two of the four allegedly false statements made in his application for a passport, namely, that he was a citizen and that he had never resided abroad. His admissions at the time of entering the country in 1914, in his draft record of 1917, and in his application for a re-entry permit in 1932, are adequate, standing alone; and, in any event, were sufficiently corroborated.

The corroboration rule in confession cases is inapplicable to admissions, such as these, which are repeatedly made long before the commission of the allegedly criminal act and under circumstances that exclude the hypothesis of improper influence. The distinction between confessions and admissions for purposes of the rule requiring corroboration has been recognized by this Court and by several commentators. Indeed, even as applied to confessions, the blanket requirement of independent proof has been widely attacked and rejected.

Moreover, the record contains sufficient independent proof to satisfy a far more rigorous corroboration rule than that generally applied in the federal courts. Apart from petitioner's own declarations, there is a direct showing that he arrived at Philadelphia in 1914, that he was not born in

Atlantic City although he never claimed any other American city as the place of his birth, and that he had never applied for naturalization. And one of the elements of the offense, the actual exhibition of the passport, was established by evidence wholly unrelated to petitioner's admissions. Coupled with his repeated declarations and entire course of conduct over more than a score of years, this evidence is plainly sufficient to sustain the conviction.

The quantitative evidence rule in perjury cases is not applicable here, as petitioner contends, since this Court is under no obligation to borrow rules of evidence from perjury and to make them applicable to other offenses specifically created by statute. Even if the quantitative evidence rule were to be applied, there is a clear exception to the rule, recognized by this Court in *United States* v. *Wood*, 14 Pet. 430, when the falsity of the statements is shown by the previous written statements of the defendant himself. Nor does the evidence in the present case present the logical difficulty of determining which of the conflicting statements is false. The nature of the earlier statements and the circumstances under which they were made, as well as the other corroborative evidence, suffices to establish the falsity of the statements in the passport application that petitioner was a citizen and that he had not resided abroad.

## ARGUMENT

### I

### THE PRESENTATION BY AN ALIEN OF A FRAUDULENTLY OBTAINED UNITED STATES PASSPORT TO OBTAIN ENTRY TO THE UNITED STATES AS AN AMERICAN CITIZEN IS A "USE" WITHIN THE MEANING OF THE STATUTE

Petitioner argues that the statute is inapplicable to the use of the fraudulently obtained United States passport to obtain entry into the United States as an American citizen, even when it is used by an alien who has no right to enter. He contends that such a use is not a "use" of a passport *qua* passport; that Congress in enacting Title IX of the Espionage Act intended to reach the use of fraudulently obtained, forged, altered, or transferred passports in travel abroad, not in entering the United States. We have answered these contentions fully in our brief in *Browder* v. *United States,* No. 287, present Term, and we do not repeat the arguments here. If, as we contend in the *Browder* case, the statute applies to the use of a fraudulently obtained passport by a citizen to establish his citizenship and right to enter upon returning from abroad, it applies *a fortiori* to the use of such a passport by an alien to effect an illegal entry. Indeed, it surpasses belief that Congress, legislating to protect the integrity of the United States passport, did not intend to reach the

use of a fraudulently obtained passport by an alien to obtain entry to the United States.[1]

Petitioner makes one other contention which requires an answer here. He argues that if the word "use" includes the presentation of a fraudulently obtained, forged, altered, or transferred passport to establish the right to enter the United States, the statute is rendered unconstitutional. In support of this contention he urges that Congress could not constitutionally punish the use of an expired passport as a means of identification upon returning to the United States from Canada or Mexico; and that such a use would be criminal under the interpretation for which the Government contends. The argument is, in our opinion, frivolous. In the first place, it rests upon the assumption, sustained by no authority, that the use of expired passports legitimately obtained and held is a use "in violation of the conditions or restrictions therein contained" forbidden by Section 3 (U. S. C., Title 22, Sec. 221)

[1] If petitioner had obtained a visa to a foreign passport by fraudulent representations, he would have violated U. S. C., Title 8, Section 220 (Act of May 26, 1924, c. 190, § 22, 43 Stat. 165), and perhaps also U. S. C., Title 22, Sections 223, 227 (Act of May 22, 1918, c. 81, § 1, 40 Stat. 559, extended by Act of March 2, 1921, c. 113, § 1, 41 Stat. 1217). There is no basis for the petitioner's statement (Brief, p. 7) that the criminal provisions of the Act of 1918 are no longer in force. Judge Lewis' observation in *Flora* v. *Rustad*, 8 F. (2d) 335 (C. C. A. 8th), that it "has never been the policy of this Government to punish criminally aliens who come here in contravention of our immigration laws" was not made with reference to aliens who achieve illegal entry by false or frudulent papers.

or a use of a "passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same" prohibited by Section 4 (U. S. C., Title 22, Sec. 222). As we have said in our brief in *Browder* v. *United States,* No. 287, present Term (p. 20), it is at least debatable whether these provisions apply to a passport legitimately obtained which is invalidated by the ordinary time limitation. In the second place, we see no basis for the suggestion that Congress could not constitutionally make it a crime to use an expired passport even for this purpose.[2] Finally, even if such an application of the statute created a constitutional doubt, to be avoided by a narrow interpretation, there is no reason why the same narrow interpretation should be adopted in construing the other provisions of the statute which present no constitutional doubt. Petitioner was not charged with using an expired passport, legitimately obtained, as a means of truthful identification, and would have no standing to challenge the constitutionality of the provisions which he contends prohibit such a use. By the same token he cannot invoke a doubt as to their constitutionality to avoid

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[2] Petitioner relies upon *Stromberg* v. *California*, 283 U. S. 359, and *De Jonge* v. *Oregon*, 299 U. S. 353, which presented issues of freedom of speech and assembly, and *Lanzetta* v. *New Jersey*, 306 U. S. 451, which presented the problem of uncertainty. It is difficult to see what bearing they have upon the power of Congress to prescribe the purposes for which expired passports may be used or to limit their use upon entering the country to the life of the passport.

the application of another section in a manner which creates no constitutional doubt. *Utah Power & Light Company* v. *Pfost*, 286 U. S. 165, 186.

## II

### THE EVIDENCE THAT PETITIONER PRESENTED THE PASSPORT TO THE IMMIGRANT INSPECTOR JUSTIFIED SUBMISSION OF THE ISSUE TO THE JURY

Petitioner contends that his motion for a directed verdict should have been granted because the evidence was insufficient to permit the jury to find that he presented the passport to the immigrant inspector. Since the Circuit Court of Appeals sustained the trial court's determination that the evidence was sufficient, we doubt that the adequacy of the evidence will be reviewed by this Court. *Delaney* v. *United States*, 263 U. S. 586, 589–590. In any event, the evidence was sufficient.

Petitioner arrived at New York on the *S. S. Normandie* on September 30, 1937 (R. 38–39). The manifest contained a "List of United States Citizens" (Ex. 6, R. 211), which noted, among other things, the number of the passport held by each person on the list. Included in the list is "Robert Wiener," the holder of passport No. 332207. This is the number of the passport issued upon the petitioner's application (R. 46; Exs. 1, 22, R. 206, 233). The page of the manifest bears the signature of Immigrant Inspector Faire, who checked all the names on the list (R. 45). Inspector Faire testified as follows (R. 46):

Q. Do you have any independent recollection of the arrival of this particular individual Robert Wiener?

A. No. I don't.

Q. Can you state from looking at the manifest, Mr. Faire, whether or not the passport of the individual Robert Wiener was presented to you?

A. Yes, sir; I can.

Q. On what do you base your statement?

A. The number of the passport, No. 332207, is entered on the manifest and it is my invariable practice when the number of the passport appears on the manifest to ask for that passport and have it shown to me.

Q. * * * You stated that it was your invariable practice to ask for the passport?

A. That is correct.

Q. And you state that it was shown to you?

A. That is correct.

Q. By whom?

A. By the passenger.

Q. In 1937 what was the practice with respect to the returning of passports after you had examined them?

A. The passport was returned to the passenger.

Thus inspector Faire testified that he knew that the passport had been shown to him because it was his invariable practice when a passport number appeared on the manifest to ask for the passport *and have it shown to him.* Nothing that he said on cross-examination or on redirect examination detracted significantly from the force of this unequiv-

ocal testimony. He was asked whether it was essential that a passenger present a passport and said that it was not if he could present other convincing proof that he was an American citizen (R. 48–49). He was asked whether it is customary for American citizens returning from a foreign land to present their passports and replied that it is (R. 49). He was asked whether the typewritten list was already prepared when he got on the ship and answered that it was compiled by the purser (R. 49). He acknowledged that he did not make any writing on the list of names as to what the passengers showed him (R. 49). He explained that his check marks indicate that the passenger was admitted as an American citizen, though not necessarily that a passport had been shown (R. 50).[3] He repeated that he could say that a passport was shown because the number appeared on the list (R. 50). He had no occasion to explain again that the reason why he could say this was that when a number appeared it was his invariable practice to ask for the passport and have it shown to him. But that this was the basis of his testimony was made

[3] Petitioner argues that this statement was fatal because all the names on this particular list were accompanied by passport numbers and since everyone was admitted as a citizen, the witness either was able to say that everyone showed a passport or else was unable to say with assurance that any particular person did. It seems clear, however, that Inspector Faire was addressing himself to the significance of the check mark in general, not to the inferences which may be drawn as to this particular list.

perfectly clear. There is, therefore, no justification for the petitioner's statement (Brief, p. 22) that the testimony was "that the witness, having no recollection of the incident, supposes that a passport was shown in the particular instance only because there was a number on the list and he had made a check mark against the name." The fundamental point was that his invariable practice permitted him to be certain that he insisted on seeing the passport and must have seen it before he admitted the petitioner as a citizen, as his check indicated he did. That this evidence was sufficient, if believed, to prove that the passport was presented seems to us to be wholly free from doubt.

It may be added that even if the evidence showed no more than the petitioner concedes it does, that the inspector asked for the passport, the jury would have been justified in inferring that the petitioner presented it in response to the request. For it is clear that he had the passport in his possession when the manifest was made up and that it is customary to use passports to establish the right to enter (R. 49). It is hardly to be supposed that when the moment came to establish his right to enter petitioner used some other evidence than the passport to support his claim that he was an American citizen; and the jury could, therefore, properly infer that it was upon the passport that he relied. There is nothing in the law of evidence which forbids a jury to draw an inference which is so highly trustworthy in the light of experience, because it

does not follow *inescapably* from the premises. Nor is there any rule which prohibits a jury from drawing two successive inferences from the evidence, if both are logically and empirically sound. The statement which is sometimes made that an inference may not be built upon an inference must be read as a condemnation of proof which, under the particular circumstances, has insufficient probative force; taken literally it is open to the destructive attack which has been levelled against it on logical grounds. See *Wigmore on Evidence* (3d Ed.) Section 41.

## III

### THERE WAS SUFFICIENT EVIDENCE TO ESTABLISH THE FALSITY OF PETITIONER'S STATEMENTS THAT HE WAS A CITIZEN AND THAT HE HAD NOT RESIDED ABROAD

In the trial court the petitioner challenged the sufficiency of the evidence as to each of the four allegedly false statements made in his application for the passport and requested that each in turn be withdrawn from the jury's consideration (R. 174–179, 180). The court instructed the jury that it might render a verdict of guilty if it found any one of the statements to be false (R. 189, 194). Petitioner did not in the court below, and does not now, contest the adequacy of the proof that petitioner falsely stated that his name was Robert William Weiner and that he was born in Atlantic City, New Jersey, on September 5, 1896 (Brief, pp. 39–40). He does contend, however, that the evidence is in-

sufficient to establish the falsity of the other two statements, that he was a citizen and that he had not resided abroad; and that since the jury may have rested its verdict upon the falsity of any one of the four statements, the judgment must be reversed if the evidence is insufficient as to any of them.

He urges that the evidence of alienage and residence abroad was insufficient because it rests on the defendant's admissions, without adequate corroboration. We contend that the admissions were sufficient, without corroboration, to take the issue to the jury; and that, in any event, the corroborative evidence was adequate.

The evidence established the following admissions by the petitioner of his alienage and residence abroad: (a) his endorsement of the correctness of the information incorporated in the manifest of the *S. S. Haverford* upon its arrival at the port of Philadelphia in 1914, that he was born in Radanjenko, Russia, that he had never before been in the United States, and that he was a citizen or subject of Russia (R. 85–86, 89; Ex. 19, R. 229); (b) his draft registration card and questionnaire, containing declarations made by him when claiming exemption as an alien in 1917 to the effect that he was born in Russia, that he was not a citizen of the United States, that he had arrived in this country in 1914 aboard the *S. S. Haverford* (R. 93–96; Ex. 21, R. 232); and his declaration in his application for a reentry permit in 1932 (an application which

aliens alone are required to make), acknowledging his birth in Russia, and his arrival at Philadelphia aboard the S. S. *Haverford* in 1914 (R. 73–75; Ex. 13, R. 220).

A. THE PETITIONER'S ADMISSIONS OF 1914, 1917, AND 1932, ARE SUFFICIENT, STANDING ALONE, TO SUSTAIN THE CONVICTION

The traditional rule barring convictions in the absence of corroboration of the petitioner's own statements is inapplicable to declarations made long before the alleged crime, without reference to a charge of crime, and under circumstances which exclude the hypothesis of improper influence.

At the outset, the distinction between confessions and admissions must be noted. "While 'confession' is frequently applied as a general term to any admission made by one accused of crime, the usage is confusing and indeed, misleading. Properly used, 'admission' is applied to statements of independent relevant facts whether in civil or criminal cases. Confession is a term which commonly is, and always should be, reserved to designate an acknowledgment of guilt, of criminal liability, or of such facts as, unless justified, directly and necessarily imply it." (2 Chamberlayne, *Modern Law of Evidence*, § 1476). Cf. *Mason* v. *United States*, 244 U. S. 362.

It is the Government's contention that independent evidence is required only in the case of confes-

sions, and of admissions made after the event and in the context of conversations, interviews, and proceedings relating to the offense itself. The theory of this position squares with the purposes of the rule requiring corroboration. For the object of that rule, in the words of the Circuit Court of Appeals, in the instant case is "protection against the risks of an untrue confession, coerced or psychopathic" (R. 259). The declarations by the petitioner, relied upon by the Government, were made on occasions long before the date of the offenses alleged and in connection with proceedings wholly unrelated to those which formed the basis of this indictment. They were made under circumstances which give no cause for anxiety that they were involuntary or psychopathic.

No decision of this Court holds that the rule requiring corroboration is applicable to admissions, as distinct from confessions, and one decision indicates that it is not. In *United States* v. *Miles*, 103 U. S. 304, the defendant was indicted for polygamy, it being charged that he had married one Emily Spencer and that later on the same day, Emily Spencer then being alive and his lawful wife, he had married one Carolyn Owens. The defendant and the two women were Mormons and all marriages in the Mormon church were secret. Consequently, the Government sought to prove the polygamous marriage to Carolyn Owens by introducing the declarations of the defendant made at a wedding supper on the evening of the day in

question in which he had stated that Emily Spencer was his first wife. At the trial the defendant admitted that he had married Carolyn Owens, and the only disputed question was whether he had previously married Emily Spencer. The trial court charged: "If you find, from the facts and circumstances proven in this case, and from the admissions of the defendant, *or from either,* that the defendant Miles married Emily Spencer, and while she was yet living and his wife he married Carolyn Owens, as charged in the indictment, your verdict should be, guilty" [italics ours]. The defendant was convicted. The judgment was reversed by this Court on the ground that the testimony of Carolyn Owens concerning the previous marriage to Emily Spencer should have been excluded. However, the Court held that the evidence of the defendant's declarations at the wedding supper was properly admitted, and the charge that these declarations standing alone were sufficient for conviction was specifically upheld (103 U. S. at 312). The decision in the *Miles* case is controlling here, since the defendant's admissions of a previous marriage in that case are strictly analogous to petitioner's admissions of alienage and residence abroad in this case.

The distinction between confessions and admissions for purposes of the rule requiring corroboration has been drawn by several commentators. Following the definition of confessions and admissions referred to above (p. 22) Chamberlayne continues: "An 'admission' as thus defined, the statement by

a party of the existence of a relevant fact, is treated by the rules of procedure in precisely the same way whether it is offered in criminal or civil cases. It is the same thing. It has precisely, under proper circumstances, the same force and effect as evidence." (2 Chamberlayne, *Modern Law of Evidence*, § 1476. See also *Wigmore on Evidence* (3d ed.) §§ 2074 (a), 821, 2087 (a)). And it is a matter of universal agreement that in civil cases there is no general rule that the admissions of a party are insufficient to support a verdict without corroborating evidence. *Wigmore on Evidence* (3d ed.) § 2075. It is ~~especially~~ significant that Greenleaf, credited ~~by Wigmore~~ as being the author of the American rule requiring the coroboration of confessions (*Wigmore on Evidence* (3d ed.), § 2071), especially excepted admissions from the impact of the doctrine:

> The term "confession," as indicating a statement subjected to particular rules for its use in criminal cases, seems in strictness to include only what in common usage the term implies, namely, a direct assertion by the accused person of the doing of the act charged as a crime. It is for this sort of statement that the particular ensuing rules of caution and limitation are intended—the rule requiring some sort of corroboration, the rule requiring freedom from the inducement of hope or fear, and the like. It would seem to follow that these limiting rules about confessions do not apply to conduct or statements of the accused, when offered

> against him, other than those of the above sort * * * [They do not] apply to admissions of incidental or evidential circumstances which may be used against the accused just as the statements of any party, inconsistent with his present contention, may be used against him. * * * Nevertheless, statements of these two sorts [including admissions], though apparently never deliberately asserted by any Court to come within the rules of confessions, are by some Courts not uncommonly treated as though the limiting rules about confessions were applicable. (Greenleaf, *Evidence* (16th ed.) § 213.) Cf. Jones, *Evidence* (2d ed.) § 295.

As opposed to these authorities, there appear to be but three decisions by the Federal courts requiring that admissions made before the event be corroborated in order to sustain a conviction. *Gordnier* v. *United States,* 261 Fed. 910 (C. C. A. 9th); *Duncan* v. *United States,* 68 F. (2d) 136 (C. C. A. 9th), defendant's petition for certiorari denied, 292 U. S. 646; *Gulotta* v. *United States,* 113 F. (2d) 683 (C. C. A. 8th). The authority of the *Gordnier* case, at least, is questionable in view of the misapprehension of the court in that case concerning the nature of admissions; it denied that declarations by the defendant, similar to those involved in the instant case, were admissions, because they were not "against interest at the time when they were made" (261 Fed. at 912). But there is no doubt that admissions, as distinguished from

declarations against interest, may be received in evidence no matter how they may have affected the fortunes of the defendant at the time they were made. *Wigmore on Evidence* (3d ed.) §§ 1048, 1049.

Petitioner cites the following cases (Brief, p. 34) to support the proposition that "* * * statements made before the commission of the crime have been held insufficient in the absence of corroboration of the *corpus delicti* * * *" (p. 20): *People* v. *Lambert,* 5 Mich. 349; *People* v. *Isham,* 109 Mich. 72; *Hiler* v. *People,* 156 Ill. 511; *Green* v. *State,* 21 Fla. 403; *People* v. *Simonsen,* 107 Cal. 345. It is enough to say that the opinion in the *Simonsen* case does not reveal whether the statements were made before or after the event, and that the remaining four cases appear to reflect a minority view as to the evidence required in prosecutions for bigamy and adultery. *Wigmore on Evidence* (3d ed.) § 2086 (b) and (c).

There is thus no compelling authority in support of the requirement of corroboration as applied to admissions of the sort which are involved in the present case. On the other hand, the requirement of independent proof has been widely attacked and rejected, even as applied to confessions. English commentators have long been at odds as to the inherent worth of confessions as evidence, and in a widely quoted passage Blackstone characterizes them as "the weakest and most suspicious of all testimony," because, as he observed, they are fre-

quently obtained by "artifice, false hopes, promises of favor, or menaces; seldom remembered accurately, or reported with due precision; and incapable in their nature of being disproved by other negative evidence." 4 *Blackstone's Commentaries* 357.[4] However, while no precise rule appears to have been formulated, it is the general view that in England even confessions, without corroboration, may provide a basis for conviction of all but a few crimes. See Chitty's comment appended to the passage from Blackstone just quoted, in 4 *Blackstone's Commentaries* 357 (ed. Lewis, 1900); 3 Russell, *Law of Crimes* (7th Eng., 1st Can. ed.) 2156 (listing bigamy, offenses involving title to property, and homicide, as crimes requiring corroboration); 9 Halsbury, *Laws of England* (2d ed.) 207, 183; *Wigmore on Evidence* (3d ed.) § 2070; *United States* v. *Williams,* 1 Cliff. 5, 25. The rule that there must be corroboration has been explicitly rejected in Massachusetts. *Commonwealth* v. *Sanborn,* 116 Mass. 61; *Commonwealth* v. *Killion,* 194 Mass. 153. And it has been roundly criticized by other courts. L. Hand, J., in *Daeche* v. *United States,* 250 Fed. 566, 571 (C. C. A. 2d); Otis, J., in

[4] This enunciation of the considerations which are involved in receiving *confessions* in evidence strikingly demonstrates how devoid of such questionable attributes are *admissions* like those of the petitioner in the instant case. They were freely made, without reference to criminal proceedings at any stage; the words were recorded when uttered; the conduct is not susceptible of distortion; and the propositions involved could be disputed by any evidence to the contrary which petitioner could produce.

*United States* v. *Gulotta,* 29 F. Supp. 947 (W. D. Mo.). It ought not to be extended by this Court to situations where, as we have said, the justification for the rule does not obtain.

The rule is universally observed that statements of the accused the making of which is coerced or induced by promises of favor may not even be received in evidence. Its vigor was recently demonstrated by this court in *Chambers* v. *Florida,* 309 U. S. 227; and it has been applied to admissions made after a charge of crime as well as to confessions. *Bram* v. *United States,* 168 U. S. 532. By the operation of this rule any statements by the accused whose probative force may be lessened by the presence of a motive to obscure or to hide the truth are excluded from the consideration of the jury and the temptation to extort confessions is effectively removed. An additional requirement of corroboration is, therefore, hardly necessary for the effective protection of innocence.

In *Funk* v. *United States,* 290 U. S. 371, 381, this Court forcefully said that the "fundamental basis upon which all rules of evidence must rest—if they are to rest upon reason—is their adaptation to the successful development of truth." Judged by this standard, a rule which would deny the sufficiency of all admissions is shown to be unreasonable by the evidence in the present case. Petitioner's entry at the port of Philadelphia in 1914 as an alien, his reliance upon alienage for exemption

from the draft in 1917, his response when seeking reentry in 1932 to the natural impulse of an alien to make an application required only of aliens, all have a circumstantial trustworthiness which decisively demonstrates that his explicit declarations of alienage and of birth and residence abroad were not the products of a romantic impulse to pose as the subject of a foreign state. The petitioner's express language together with his behavior over a period of twenty-two years leave room for no substantial doubt that he was an alien and that he had been born and had resided in Russia.

B. IF CORROBORATION IS REQUIRED, THERE WAS SUFFICIENT INDEPENDENT PROOF

*1. There was sufficient independent evidence of the falsity of the statements*

The manifest of the S. S. *Haverford* has double probative significance. It represents a statement of facts, verified by the petitioner on his arrival at Philadelphia (R. 85, 89). But it is admissible also as a record of the petitioner's arrival at that port in 1914. See *McInerny* v. *United States*, 143 Fed. 729, 736, 738 (C. C. A. 1st); *Sullivan* v. *United States*, 161 Fed. 253 (C. C. A. 1st). The identity of the petitioner as the person named in the manifest is not disputed. For this purpose the manifest is independent evidence which fits the petitioner's own account of his personal history. Its function is corroborative in the most significant sense, since the inferences to be drawn from it exactly coincide with

the inferences raised by the petitioner's own declarations.

The forgery of the Atlantic City birth record likewise has two-fold evidential force. Petitioner's reliance upon it when applying for the passport in 1935, constitutes an admission on his part by conduct that he thought himself unable to present genuine proof of birth anywhere in the United States. But the forged entry in the birth records of Atlantic City, when taken with one additional item of evidence, enjoys another attribute as proof. The additional item of evidence is the testimony (R. 28–31) of the Assistant Registrar of the New Jersey Department of Health that, except for the forgery there was no other entry of petitioner's birth in Atlantic City or Atlantic County on the date given or on any date during the years just preceding and following. Thus there was independent proof that petitioner was not born in Atlantic City, New Jersey, where he claimed to have been born on the single occasion when he said that he was a native of this country rather than of Russia. If the petitioner were in truth a native citizen of the United States, and at no time has he claimed to be a naturalized citizen, it was open to him when applying for a passport to produce his records of birth from the American city in which he was actually born, or to explain his inability to do so (R. 21). But he chose to claim as the city of his birth one in which he was not born, as this evidence, wholly independent of his admissions,

conclusively demonstrates. Like the manifest of the *S. S. Haverford,* the forgery and the testimony of the State Health Officer also fulfills the function of corroboration in its most significant sense. That is to say, the inferences to be drawn from this independent proof nicely coincide with the petitioner's repeated previous declarations respecting his birth abroad.

It can hardly be seriously asserted that the Government is obligated to make an affirmative showing of the absence of any genuine record of the petitioner's birth in any city, town, or village in the United States. Nor can the Government reasonably be required to produce the record of petitioner's birth in Radanjenko, U. S. S. R., the town which the petitioner had consistently acknowledged to be the place of his nativity. In the light of the always enormous difficulties of such proof (see *Duncan* v. *United States,* 68 F. (2d) 136 (C. C. A. 9th), certiorari denied, 292 U. S. 646), and the state of war existing at the time of the institution of this prosecution (R. 2), any such requirement would gravely impede intelligent and effective enforcement of the laws relating to persons of foreign birth and citizenship at a moment when wise administration of these very laws is of momentous importance.

Finally, and perhaps of most signficance, there is the direct and positive testimony introduced by the Government to prove that at no time has the petitioner made any application for naturalization

(R. 72–73). This evidence is wholly independent of petitioner's admissions and it corroborates them most strongly. For if it be conceded, as petitioner's admissions and the forged entry of birth and the testimony as to the absence of any genuine entry of birth in Atlantic City combine to demonstrate, that petitioner was not born in this country, his claim to citizenship could only rest upon a showing that he had been naturalized.

These items of independent proof would be sufficient to meet highly exacting requirements of corroboration, where such requirements assumed to be applicable to defendant's admissions here. The Federal courts, however, have wisely and generally conceded that the amount of independent proof required to satisfy the corroboration rule, even as to confessions, is slight. *Daeche* v. *United States,* 250 Fed. 566 (C. C. A. 2d); *Mangum* v. *United States,* 289 Fed. 213 (C. C. A. 9th); *Pearlman* v. *United States,* 10 F. (2d) 460 (C. C. A. 9th); *Forlini* v. *United States,* 12 F. (2d) 631 (C. C. A. 2d); *Wynkoop* v. *United States,* 22 F. (2d) 799 (C. C. A. 9th); *Jordan* v. *United States,* 60 F. (2d) 4 (C. C. A. 4th), certiorari denied, 287 U. S. 633; *Ryan* v. *United States,* 99 F. (2d) 864 (C. C. A. 8th), certiorari denied, 306 U. S. 635, 668; *Gregg* v. *United States,* 113 F. (2d) 687 (C. C. A. 8th). Moreover, at least one of the three Federal cases in which it has been held that admissions made before the event require corroboration (*Duncan* v. *United States, supra*) is distinguishable on the

ground that there was no showing that naturalization had not been obtained. The petitioner urges that the *Duncan* case cannot be distinguished on this ground, because, as he argues, there was proof in that case of foreign birth. But the Court held that the basis laid for the admission of a Roumanian birth certificate in the defendant's name was inadequate, although it also ruled that the objection to its admission was improperly raised. We think it clear that the Court thereupon proceeded to treat the defendant's additional objections on the assumption (p. 142) that the birth certificate was *not* properly in evidence. It was on this assumption that the Court held that the possibility that the defendant had become a citizen had not been negatived by the Government (p. 143).

As to the petitioner's admissions that he had resided abroad, it is enough to point again to the forged entry in the Atlantic City birth records, the absence of any genuine entry in those records, and the record of arrival in 1914 afforded by the ship's manifest, which amply corroborate his own account of his beginnings and his odyssey. They "fortify" his repeated declarations that he was born in Russia and resided there until he entered this country in 1914. See L. Hand, J., in *Daeche* v. *United States, supra*, 250 Fed. at 571, 572.

To deny the sufficiency of the corroborative evidence discussed above would, it seems clear, convert a requirement that admissions be corroborated

into a rule that admissions may *only* serve to corroborate other proof of the crime charged.

*2. There was independent evidence of petitioner's use of the passport*

The corroboration rule is traditionally cast in terms of a requirement of independent evidence of the *corpus delicti*. While the definition of *corpus delicti* is volatile (*Wigmore on Evidence* (3d ed.) § 2072) and the courts have differed markedly as to its content, there is no general requirement that there be independent evidence as to every element of the *corpus delicti*. The case of *Forte* v. *United States*, 94 F. (2d) 236 (App. D. C.) in which this harsh rule was enunciated was specifically disapproved by the Circuit Court of Appeals in the instant case (R. 259) and appears to represent what is decidedly a minority view. That the corroboration need not blanket all the elements of the crime is indicated by *People* v. *Lytton*, 257 N. Y. 310, where the defendant, charged with homicide while in the commission of a robbery, confessed to the police that he had engaged in the robbery. There was independent proof that the homicide had occurred at the same time. The trial court charged that independent evidence of the robbery was not essential to a conviction of murder. The Court of Appeals approved the charge of the trial court (pp. 313–316), holding, in an opinion by Judge Cardozo, that the independent proof required to supplement a confession by Section 395 of the New York

Code of Criminal Procedure need relate only to the homicide. Later the Court of Appeals reached a similar result in affirming a judgment of conviction where the defendant was charged with a second offense of operating a motor vehicle while in an intoxicated condition, and the only evidence of a previous offense was his own acknowledgment of a prior conviction. *People* v. *Warner*, 152 Misc. 607, 274 N. Y. S. 689 (County Court), affirmed, 244 App. Div. 833, 279 N. Y. S. 639 (3d Dep't), affirmed, 269 N. Y. 597.

Thus, even if the *corpus delicti* includes the falsity of the statements by which the passport was obtained, the independent evidence that the passport was used proves one element of the crime and this should be sufficient.

C. THE QUANTITATIVE EVIDENCE RULE IN PERJURY CASES IS INAPPLICABLE AND IN ANY EVENT THE EVIDENCE WOULD SATISFY THE REQUIREMENTS OF THAT RULE

Perjury, like treason, enjoyed a unique status among common law crimes. It has been suggested that the origin and development of the rule of evidence peculiar to it is to be explained by the historical vagaries of the court system in England.[5] (*Wigmore on Evidence* (3d ed.) § 2040), and the doctrine has been the target of pointed and fre-

[5] For an expression of the view that the rules of evidence are "less hampered by history than some parts of the substantive law, see Holmes, J., dissenting, in *Donnelly* v. *United States*, 228 U. S. 243, 277–278.

quent criticism in recent years. See *Goins* v. *United States,* 99 F. (2d) 147, 149, 150 (C. C. A. 4th), affirmed, 306 U. S. 622, 623; *Wigmore on Evidence* (3d ed.) [§ 2041; Report of the New York Law Revision Commission (Legislative Documents 1935, No. 60) p. 322; McClintock, *What Happens to Perjurers* (1940) 24 Minn. L. Rev. 727. Yet we do not deny that the rule that the falsity of the defendant's statement cannot ordinarily be proved by the uncorroborated testimony of a single witness is now almost universally accepted: There is no occasion in the present case to argue that the rule should be discarded because the reason for it has disappeared. Cf. *Funk* v. *United States,* 290 U. S. 371; *Goins* v. *United States,* 306 U. S. 622, 623, *supra.* In the first place, the petitioner is not here charged with the familiar common law offense of perjury, as now embodied in U. S. C., Title 18, Section 231. The crime with which he is charged was specifically created by statute (U. S. C., Title 22, Section 220), and this Court is under no obligation to borrow rules of evidence from perjury or other crimes and to make them applicable here.[6] Petitioner urges, nevertheless, that a marked similarity exists between the offense made punishable by U. S C., Title 22, Section 220, and U. S. C., Title 18,

[6] For instances of a refusal to apply the rules of perjury cases to prosecutions for the statutory offense of swearing falsely in bankruptcy proceedings, see *Kahn* v. *United States,* 214 Fed. 54 (C. C. A. 2d); *Schonfeld* v. *United States,* 277 Fed. 934 (C. C. A. 2d).

Section 231. On the assumption, therefore, that the amalgamation of the two offenses commends itself for purposes of testing the sufficiency of the evidence, it may be well to examine the traditional requirement that there be more than the uncorroborated testimony of a single witness in perjury trials.

While this rule is widely observed both in England and in the United States, a sensible and well defined exception to it is also clearly recognized. And that exception is plainly controlling in the present case. In *United States* v. *Wood,* 14 Pet. 430, a prosecution for perjury, this Court examined the application of the so-called "two-witness rule" to a situation in which a defendant's sworn statement was inconsistent with repeated prior declarations in writing emanating from the defendant himself. Following an examination of the English authorities the Court held that such declarations were sufficient to sustain a conviction and defined a category of perjury cases in which neither the testimony of two witnesses nor the corroborated testimony of a single witness is essential (p. 441):

> We thus see that this rule, in its proper application, has been expanded beyond its literal terms, as cases have occurred in which proofs have been offered equivalent to the end intended to be accomplished by the rule. In what cases, then, will the rule not apply? Or in what cases may a living witness to the *corpus delicti* of a defendant, be dispensed with, and documentary or written testimony

> be relied upon to convict? We answer, to all such where a person is charged with a perjury, directly disproved by documentary or written testimony springing from himself, with circumstances showing the corrupt intent. In cases where the perjury charged is contradicted by a public record, proved to have been well known to the defendant when he took the oath; the oath only being proved to have been taken. In cases where a party is charged with taking an oath, contrary to what he must necessarily have known to be the truth, and the false swearing can be proved by his own letters, relating to the fact sworn to; or by other written testimony, existing and being found in the possession of a defendant, and which has been treated by him as containing the evidence of the fact recited in it.

The admissions in the *Wood* case consisted of letters written by the defendant; the admissions in the instant case consist of acts, of the defendant's verification of the declarations in the ship's manifest, and of the declarations made in the defendant's own handwriting in the cases of the draft papers and the application for the reentry permit. That an exact parallel exists between the two kinds of evidence is patent.

That there is no logical objection to the conviction of the defendant upon the basis of his own inconsistent statements is abundantly clear. While neither the principle of contradiction nor that of inconsistency identifies which of the inconsistent or

contradictory statements is true and which is false,[7] the record in the instant case presents no arid logical problem. The abundant evidence of the circumstances surrounding the making of the earlier statements as well as the corroborative evidence discussed above leaves no doubt of the truth of the earlier statements and the falsity of those made in the passport application. The evidence of accompanying circumstances provides the key to the resolution of the logical difficulty, when, as in the present case, it identifies the conflicting statement which is false.[8] See Pollock, C. B. in *Reg.* v. *Hook,* Dears. & B. 606, 8 Cox Crim. Cas. 5; cf. *People* v. *Doody,* 172 N. Y. 165. Such evidence suffices as a matter of "experience, logic, and common sense" (see Holmes, J., in *Donnelly* v. *United States,* 228

[7] *Cf.* N. J. Rev. Stat. (1937), tit. 2, c. 157 (5), and N. Y. Pen. Code, §§ 1627, 1627a, permitting indictments in the case of sworn contradictory statements without assigning falsity to either, and permitting convictions where nothing further is proved.

[8] The nicety of this question has provoked a sprightly dispute in the English cases. See *King* v. *Harris,* 5 B. & Ald. 926; *Rex* v. *Knill,* and the anonymous case decided by Yates, J., at the Lancaster summer Assizes in 1764, both reported in notes to the *Harris* case on pages 929 and 937; *Reg.* v. *Wheatland,* 8 Carr. & Payne 238; and *Rex* v. *Mayhew,* 6 Carr. & Payne 415. The opinion of Pollock, C. B., in *Reg.* v. *Hook,* suggests that the matter in England has finally been settled in favor of the sufficiency of contradictory statements to sustain the conviction of perjury.

U. S. 243, 277); that it also suffices as a matter of law is the plain import of the decision of this Court in *United States* v. *Wood,* 14 Pet. 430, *supra.* See also *Sullivan* v. *United States,* 161 Fed. 253, 255, 256 (C. C. A. 1st); *Gordon* v. *United States,* 5 F. (2d) 943, 945 (C. C. A. 8th); *Jacobs* v. *United States,* 31 F. (2d) 568 (C. C. A. 6th), certiorari denied, 279 U. S. 869. The doctrine of the *Wood* case was reaffirmed in *Hammer* v. *United States,* 271 U. S. 620, 627, where it was said in an opinion by Mr. Justice Butler:

> The question is not the same as that arising in a prosecution for perjury where the defendant's own acts, business transactions, documents, or correspondence are brought forward to establish the falsity of his oath alleged as perjury. That, in some cases, the falsity charge may be shown by other than the testimony of living witnesses is forcibly shown by the opinion of this Court in *United States* v. *Wood,* 14 Pet. 430, 443. That case shows that the rule which forbids conviction on the unsupported testimony of one witness as to falsity of the matter alleged as perjury does not relate to the kind or amount of other evidence required to establish that fact. Undoubtedly in some cases documents emanating from the accused and the attending circumstances may constitute better evidence of such falsity than any amount of oral testimony.

## CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Circuit Court of Appeals should be affirmed.

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JANUARY 1941.

ROBERT L. WERNER,
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# APPENDIX

Title IX of the Espionage Act of 1917, 40 Stat. 227 (U. S. C., Title 22, Sections 213, 220, 221, 222), provides:

> SECTION 1. Before a passport is issued to any person by or under authority of the United States such person shall subscribe to and submit a written application duly verified by his oath before a person authorized and empowered to administer oaths, which said application shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport. Clerks of United States courts, agents of the Department of State, or other Federal officials authorized, or who may be authorized, to take passport applications and administer oaths thereon, shall collect, for all services in connection therewith, a fee of $1, and no more, in lieu of all fees prescribed by any statute of the United States, whether the application is executed singly, in duplicate, or in triplicate.
>
> SEC. 2. Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of

any false statement, shall be fined not more than $2,000 or imprisoned not more than five years [1] or both.

SEC. 3. Whoever shall willfully and knowingly use, or attempt to use, any passport issued or designed for the use of another than himself, or whoever shall willfully and knowingly use or attempt to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports, which said rules shall be printed on the passport; or whoever shall willfully and knowingly furnish, dispose of, or deliver a passport to any person, for use by another than the person for whose use it was originally issued and designed, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

SEC. 4. Whoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be falsely made, forged, counterfeited, mutilated, or altered any passport or instrument purporting to be a passport with intent to use the same, or with intent that the same may be used by another; or whoever shall willfully or knowingly use, or attempt to use, or furnish to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

[1] By the Act of March 28, 1940, c. 72, 54 Stat. 80, the maximum term of imprisonment under this and the succeeding sections was increased to ten years.

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# SUPREME COURT OF THE UNITED STATES.

No. 338.—October Term, 1940.

Welwel Warszower, alias "Robert William Wiener," etc., Petitioner, *vs.* The United States of America. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[February 17, 1941.]

Mr. Justice Reed delivered the opinion of the Court.

This case is similar to *Browder* v. *United States*, decided today. This petitioner also was indicted for the use of a passport for the purpose of entering the United States, which passport had been secured by false statements in the application for its issue. We granted certiorari because of the contention that this use of the passport was not prohibited by section 2, Title IX of the Act of June 15, 1917, and because of a conflict on a rule of evidence, referred to by the Circuit Court of Appeals.

The false statements charged were with respect to petitioner's name, citizenship, place of birth and residence abroad and the use relied upon was the presentation of the passport to an immigration inspector. A jury convicted petitioner, a sentence of two years was imposed and that judgment was affirmed by the Circuit Court of Appeals.[1]

As grounds for reversal petitioner urges (1) that the presentation of a wrongfully held passport to an immigration officer upon landing is not a use within the statute; (2) that the evidence of the use was insufficient to justify the submission of the case to the jury; and (3) that conviction was obtained by the use of admissions before the crime, without corroboration, to establish necessary elements of the charge.

Nothing need be added to the discussion in the *Browder* case of the illegality of this use. There are no marks of differentiation.

*Proof of Presentation.*—Petitioner's argument that the proof of presentation of the passport was insufficient rests upon the testimony of the inspector, which was based on the manifest of United

[1] 113 F. (2d) 100.

States citizens arriving on the *S.S. Normandie* on September 30, 1937. The manifest contains a list of names, accompanied by passport numbers and other information. Next to each name appears a check mark by the inspector. The list includes "Robert Wiener," the holder of passport No. 332207, which is the passport issued to petitioner. The inspector testified that he had no independent recollection of the arrival of this Robert Wiener, but that from looking at the manifest he could say that the passport had been presented to him, because "it is my invariable practice when the number of the passport appears on the manifest to ask for that passport and have it shown to me . . . by the passenger." On cross examination the inspector stated that he himself did not make any writing on the manifest as to what the people showed him. This colloquy then occurred:

"The Court: . . . . do you make any entry on the manifest when a man identifies himself as an American citizen?

The Witness: The whole manifest is of American citizens.

The Court: And when the man presented his passport what did you do?

The Witness: That check mark shows he was admitted as a United States citizen.

The Court: On a passport?

The Witness: Not necessarily.

The Court: Can you tell us whether he had a passport?

The Witness: From the fact the number of the passport appears there.

Q. And you checked——

Mr. Fowler: That is objected to.

Q. Did you check the information on the manifest with information in the passport?

A. That is correct."

The petitioner asks reversal because of the answer "Not necessarily," contending this shows that the check mark did not inescapably indicate the presentation of a passport. The Government argues that the check mark was intended merely to show admission as a citizen and that the language does not nullify or indeed impugn the direct assertions of the inspector. We are clear that this testimony as a whole justified the submission to the jury at any rate and its conclusion that petitioner actually used his passport in securing admission to this country.

*Corroboration of Admissions.*—The prosection had the burden of proving that the passport was obtained by the use of false state-

ments. As the trial court instructed the jury it might convict if any one of the statements charged in the indictment to be false was found false, it is necessary before affirmance is justified to decide whether there was adequate evidence to support the charge of falsity as to each of the statements. Petitioner contends that as to the allegedly false statements of American citizenship and no prior residence outside the United States, there was no proof of falsity except admissions to the contrary made by petitioner prior to the use of the passport. Such admissions, it is urged, require corroboration. This argument is drawn from the requirement of corroboration as to confessions after the crime.[2] As a corollary, it is said that the corroboration must reach to each element of the corpus delicti.[3]

To establish that petitioner was not a citizen of the United States and that he had resided abroad, the Government relied on the following proof: The manifest of alien passengers of the *S.S. Haverford,* which arrived at Philadelphia on March 27, 1914, stated that Welwel Warszower, age 21, was a citizen or subject of Russia, whose last permanent residence was in Vikolsk, Russia, where his father lived; that he had never been in the United States before; and that he had been born in Radajenko, Russia. Although the officer who had examined Warszower on this occasion was dead, the boarding officer testified it was the practice to check all answers on the manifest with the alien personally before allowing him to enter. Three years later, on June 5, 1917, petitioner registered for the draft under the name "William Weiner"; he stated he was an alien born in Russia on September 5, 1893, and a citizen or subject of Russia. Petitioner furnished the same information in a draft questionnaire returned on December 31, 1917, where he also stated that he spoke Russian, that he arrived in this country at Philadelphia on March 28, 1914, on the *S.S. Haverford,* that his parents had not been naturalized, that he had not taken out first papers, and that he was willing to return to Russia and enter its military service. In 1932, preparatory to traveling abroad, petitioner applied for a reentry permit, which is required only of aliens. To

[2] Wharton, Criminal Law (12th Ed.) §§ 357, 359; Daeche *v.* United States, 250 Fed. 566; Wigmore, Evidence (3rd Ed.) §§ 2070-71; Chamberlayne, Modern Law of Evidence § 1598; Underhill, Criminal Evidence (4th Ed.) p. 42.

[3] Cf. Forte *v.* United States, 94 F. (2d) 236.

support his application he showed the inspection card issued to him in 1914 upon his arrival in Philadelphia, and stated that he was born on September 5, 1893, at Kiev, Russia, which was his last permanent residence before his arrival in Philadelphia. The Government also showed that petitioner had never applied for naturalization under his own name, or the names "Weiner" or "Wiener", which he on occasion used. In his 1936 application for a passport in the name of Robert William Wiener, petitioner submitted a certified transcript of an entry in the Atlantic City birth records that a person of that name was born there September 5, 1896, but at the trial the Government proved the entry a forgery.

The rule requiring corroboration of confessions protects the administration of the criminal law against errors in convictions based upon untrue confessions alone. Where the inconsistent statement was made prior to the crime this danger does not exist.[4] Therefore we are of the view that such admissions do not need to be corroborated. They contain none of the inherent weaknesses of confessions or admissions after the fact. Cases in the circuits are cited by petitioner to the contrary. In *Gulotta* v. *United States*,[5] the decision turned on the similarity of confessions and admissions rather than upon any differences between admissions before and after the fact. In *Duncan* v. *United States*[6] and in *Gordnier* v. *United States*[7] the conclusion was reached without any comment upon this difference. Our consideration of the effect of admissions prior to the crime leads us to the other conclusion.[8]

The law requires that a jury be convinced beyond a reasonable doubt of the defendant's guilt. An uncorroborated confession or evidence of perjury, given by one witness only,[9] does not as a matter of law establish beyond a reasonable doubt the commission of a crime but these are exceptions to the normal requirement that disputed questions of fact are to be submitted to the jury under appropriate instructions. In this case the earlier statements of birth and therefore necessarily of residence outside of the United

[4] Wigmore, *supra*.

[5] 113 F. (2d) 683.

[6] 68 F. (2d) 136.

[7] 261 Fed. 910.

[8] Cf. Miles *v.* United States, 103 U. S. 304.

[9] Phair *v.* United States, 60 F. (2d) 953. Cf. United States *v.* Harris, No. 52 this Term, decided December 9, 1940.

States, if believed by the jury, prove the falsity of the statements to the contrary in the application. Where the crime charged is a false statement and where it finds its only proof in admissions to the contrary prior to the act set out in the indictment, it may be unlikely that a jury will conclude that the falsity of the later statement is proven beyond a reasonable doubt but such evidence justifies submission of the question to them.

In this present case there was other evidence of the falsity of the disputed statements in the application. The manifest of the *S.S. Haverford* showed petitioner's arrival and classification as an alien at Philadelphia in 1914. The forged birth certificate adds to the proof of foreign birth by showing an effort to establish American nativity by false means and the Government's proof of the absence of any attempt at naturalization supports the allegation of false statement as to citizenship.

*Affirmed.*

Mr. Justice MURPHY took no part in the consideration or decision of this case.

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

END